

Internal Revenue Service

Department of the Treasury
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LEGEND:

Taxpayer =
Statute A =
X =
Date 1 =
Employees =

Dear _____ :

This is in response to a letter submitted by your authorized representative requesting a private letter ruling under sections 61 and 451 of the Internal Revenue Code (Code). Specifically, rulings are requested that under the facts described below, amounts of salary waived by certain Employees of X are not includible in their gross incomes. Taxpayer is the administrative office responsible for reporting gross income on behalf of Employees. The facts, as represented, are as follows.

The legislative body of X enacted Statute A, effective Date 1, permitting Employees to voluntarily waive a statutorily specified amount of salary on a monthly basis. The waivers are irrevocable and must be filed by an Employee by a specified date prior to the Employee being paid. The waived amounts remain in the general revenue fund as allocated by the legislative body of X.

Employees are government employees. Employees have no claim to the waived amounts in the future based on any statute, regulation, or policy of X. That is, Employees have no legally binding right to the waived amounts in any future taxable year in the form of compensation or any other benefit.

Section 61 of the Code provides that gross income means all income from whatever source derived, unless otherwise excluded by law, including (but not limited to) compensation for services, including fees, commissions and similar items.

Section 451 of the Code provides that an item of gross income shall be included in a taxpayer's gross income for the taxable year in which received by the taxpayer, unless, under the method of accounting used in computing taxable income, such amount is to be properly accounted for as of a different period.

Section 1.451-1(a) of the Income Tax Regulations, provides, in part, that gains, profits, and income are to be included in gross income for the taxable year in which they are actually or constructively received by the taxpayer unless includible for a different year in accordance with the taxpayer's method of accounting.

Section 1.451-2(a) of the Income Tax Regulations, provides, in part, that income although not actually reduced to a taxpayer's possession is constructively received by him in the taxable year during which it is credited to his account, set apart for him, or otherwise made available so that he may draw upon it at any time, or so that he could have drawn upon it during the taxable year if notice of intention to withdraw had been given. However, income is not constructively received if the taxpayer's control of its receipt is subject to substantial limitations or restrictions.

Rev. Rul. 66-167, 1966-1 C.B. 20, holds that statutory fees or commissions are not includible in the gross income of the executor of an estate, where he effectively waives his right to receive such fees or commissions within a reasonable time after commencing to serve as the executor and all his other actions with respect to the estate are consistent with an intention to render gratuitous service. Rev. Rul. 66-167 clarified Rev. Rul. 56-472, 1956-2 C.B. 21, to remove any implication that, although an executor effectively waives his right to receive commissions, such commissions are includible in his gross income unless the waiver is executed prior to performance of any service.

Therefore, based solely on the facts presented and the representations made, we conclude that the amounts of salary waived by Employees pursuant to Statute A are not includible in the gross incomes of Employees.

Except as expressly provided herein, no opinion is expressed or implied as to the federal tax consequences of the facts described above under any other provision of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant.

The ruling contained in this letter is based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Catherine L. Fernandez
Branch Chief,
Executive Compensation Branch
Office of Division Counsel / Associate Chief
Counsel / Tax Exempt & Government Entities